

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SELIM ZHERKA, and THE GUARDIAN NEWS, INC.,

Plaintiffs,

07 Civ. 8047 (CLB )

-against-

RUSSELL MARTINEZ, individually, STEPHEN  
FORCE, individually, and EDWARD FALCONE,  
Individually

**AFFIRMATION IN  
RESPONSE TO MOTION  
TO INTERVENE**

Defendants.  
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JONATHAN LOVETT, an attorney duly admitted to practice before this Court and the Courts of the State of New York, hereby affirms under penalty of perjury that the following statement is true:

1. I am counsel to Plaintiffs who in early September of 2007 filed and served this lawsuit seeking declaratory, injunctive and monetary relief by reason of the Defendants' refusal to permit Plaintiffs to distribute the Westchester Guardian, a weekly periodical, inside two of the Yonkers public library buildings. In that connection Plaintiff Zherka was advised by the Defendants, as made clear by a video recording, that his First Amendment rights were not welcome in the Library.

2. According to Defendants on September 18, 2007, the Library Board of Trustees adopted a resolution setting forth for the first time a written "Policy on Delivering Free Newspapers and Magazines". Given the short interval of time between commencement of this law suit and the adoption of the subject policy it appears self-evident that the Policy

was adopted because Plaintiffs sought to exercise their First Amendment rights as set forth in the complaint and because Plaintiffs filed the instant law suit alleging First Amendment violations.

3. Consideration of the Policy, as adopted and applied, of necessity leads to the conclusion that that Policy is patently offensive to the freedoms guaranteed by the First Amendment and must be declared void.

4. Since the Yonkers Public Library, as an apparent deep pocket, wants to intervene in this litigation, we welcome it as a party litigant.

5. In that connection and for the reasons set forth in the accompanying memorandum of law, we submit that following a hearing injunctive relief must be awarded against the Library as well as the individually named Defendants.

WHEREFORE intervention should be granted to the Yonkers Public Library and this matter should be scheduled for a trial in January 2008 with respect *inter alia* to the issue of unconstitutionality as presented by the Policy.

Dated: White Plains, N.Y.  
December 6, 2007



Jonathan Lovett (4854)